

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

CORDELROE MCMUTUARY,

Petitioner,

Case No. 2:13-cv-365

v.

HON. R. ALLAN EDGAR

THOMAS MACKIE,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Petitioner's Objection to Magistrate Judge Timothy P. Greeley's Report and Recommendation ("R&R") dated January 14, 2014, which recommended that the petition for writ of habeas corpus be dismissed because it is barred by the one-year statute of limitations. (Docket #3.) Petitioner makes no new arguments in his Objection. He argues that the statute of limitations should not bar his petition because his failure to appeal was based on a letter from appellate counsel that stated he had "no appealable issues in your plea or sentence." Petitioner argues that because he believes there are appealable issues the letter from appellate counsel should excuse the statutory bar.

However, Petitioner provides no viable argument that his petition is entitled to tolling or alleged facts or circumstances that merit tolling. Petitioner is not excused from the one-year statute of limitations provided by 28 U.S.C. § 2244(d)(1) because he listened to the advice of his appellate counsel. Moreover, the Michigan courts concluded that Petitioner was not entitled to relief pursuant to MCR 6.508(D). Although Petitioner claims he is innocent he provides no facts or evidence to show that he is entitled him to relief.

For the reasons stated above, Magistrate Judge Greeley's R&R is **APPROVED AND ADOPTED** as the Opinion of the Court. (Docket #3.) **IT IS ORDERED** that the petition is **DISMISSED** as barred by the one-year statute of limitations. **IT IS FURTHER ORDERED** that a certificate of appealability be denied.

A judgment consistent with this Order will be entered.

**SO ORDERED.**

Dated: 8/7/2014

/s/ R. Allan Edgar  
R. Allan Edgar  
United States District Court Judge